

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
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FOR MR. JUSTICE VAN ORSDOL

COURT OF APPEALS
DISTRICT OF COLUMBIA
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In the Court of Appeals

OF THE DISTRICT OF COLUMBIA

CLERK

OCTOBER TERM 1933

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No. 6137
—

JAMES L. PINN
APPELLANT

vs.

EMMA E. LAWSON, HELEN MARTIN, WASHINGTON TRIBUNE PUBLISHING CO., a Corporation

APPELLEES

—
BRIEF FOR APPELLEES.
—

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BRIEF OF THE APPELLEES

GEORGE A. PARKER,
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Attorneys for Appellees.

INTRODUCTION

The statement of the case as set forth by the plaintiff in error, who was also the plaintiff below, is so confusing and wanders so far from the bill of exceptions that we think it necessary and useful to re-state the case. And since the bill of exceptions states what occurred at the trial as succinctly as counsel can, it might be well to appropriate the same here verbatim, so far as the testimony is concerned as our

STATEMENT OF FACTS

THERE WAS TESTIMONY OFFERED ON BEHALF OF THE PLAINTIFF TENDING TO PROVE: that he was Pastor of the First Baptist Church of Georgetown, and a professor at Howard University; that on July 24, 1931, the defendants, Lawson and Martin, members of said church, filed with the Deacon Board of said church, certain written charges against the plaintiff in which he was accused of misappropriating Twenty-five Dollars given to him by the Dorcas Missionary Society to be paid to the Lott Carey Convention. The plaintiff was cited by the Deacon Board of the church to appear on July 28, 1931. That the plaintiff did not appear as cited because said Board had no authority to hear the charges against him as such authority is vested in the church alone. That the plaintiff was then cited by the church to appear on Friday, July 31, at 8 p.m., and answer the alleged charges. That the defendant, the Washington Tribune Company, secured a copy of said charges from said Deacons' meeting on the 28th of July, 1931, and published the same in its newspaper dated July 31, 1931. The plaintiff produced testimony tending to show that he did not consent that the Tribune should publish the story complained of and that he had warned Mackey that it was not true and that it would be dangerous to publish it. That said charges were published by the defendant Tribune Company, before the church meeting was held and the charges taken up by the church.

That the charges were a private matter with which the public was not concerned. That according to the Rules of the church said Meeting of the Deacon Board and Business meeting of the church were private meetings, open only to the officers and members of the church. That said meeting was governed by Hiscox Manual on Baptist Church Rules; said manual was intro-

duced in evidence by plaintiff and admitted for such references as might be made as to whether church and deacons' meetings were public or private. No part of the manuel was read and on cross examination plaintiff when asked, failed to indicate any rule in the manuel providing for privacy of a church or deacons' meeting.

That the charges were printed and published by the said paper without plaintiff's consent, and offered further testimony tending to prove he had not misappropriated the money as charged. That the statement of plaintiff concerning the women of the church had been made in church meeting while discussing an accusation published in a Baltimore paper of plaintiff's alleged misconduct with a Baltimore woman, when plaintiff said, "If I was the kind of man they say I am, I wouldn't have to go to Baltimore. I could use any woman in this church or their daughters, if I wanted to." That the plaintiff offered further evidence tending to prove that there was a standing resolution of the church which authorized him as pastor to draw upon the funds of any auxiliary of the church for church expenses and that he drew the \$50.00 from the treasurer of the society in July for the current expenses of the church; and that the clerk's minutes showed the money accounted for in the treasurer's monthly report of the trustee board for August, 1930, and that the defendants, Lawson and Martin, knew these facts; that Rev. Pinn, when asked about the said \$50.00 in one of the business meetings of the church in which he was presiding as moderator, said "I will take care of that item later." (That there was a factional fight in the church, and that there was so much confusion in the church when the charges were heard that he was unable to be heard.) That as a result of the publication of these charges by the defendants, the plaintiff lost his positions as pastor of the church and

professor at Howard University, and that the plaintiff was brought into disgrace and greatly injured in reputation and character.

THERE WAS TESTIMONY OFFERED ON THE PART OF THE DEFENDANTS TENDING TO PROVE: that the defendants, Emma Lawson and Helen Martin, were members of the said church and members of the Dorcas Missionary Circle of said church. That they made said charge as members of said church and society. That they, the defendants, Lawson and Martin, were present at the meeting of the Dorcas Missionary Society when Rev. Pinn stated that he had drawn \$50.00 from the treasury of the society to take to the Lott Carey Foreign Mission Convention; that Deacon Jefferson offered a motion which prevailed that \$25.00 of the \$50.00 be given to Rev. Pinn for expenses to the convention and that the other \$25.00 to be given to him to pay to the Lott Carey Foreign Convention for missions; that they later learned that he went to the convention but failed to pay the money; that they were present at a meeting of the church when he was asked about it and he admitted that the money had been given to him, but he had not paid it, but promised that he would take care of it later; that they thereafter filed charges against him with the deacons' board; that he was cited to appear before the deacons' board but failed to do so and was then cited to appear before the church; that he was tried by the church and found guilty of the charge; that the charge was true; that the money was not obtained under authority of the alleged resolution nor for the current expenses of the church; and further, that the alleged item of \$50.00 in the church record was not contained in the original report made by the secretary.

The Tribune introduced testimony tending to show that the plaintiff had consented to the publications con-

cerning him and including the once complained of, that he had invited Mackey to cover these stories because the Afro-American had stories only giving Boyle's side of the Baltimore controversy; that he had sued the Afro-American concerning the same.

The defendant produced testimony tending to show that the meetings of the church and of the Deacon Board were open to outsiders as well as church members, and that other persons on some occasions attended. That the defendant paper printed a fair and accurate statement of both sides of the story as news. That the affair was a matter in which the public was interested and had a right to know about.

ARGUMENT

The plaintiff in error has in his brief set forth what he calls an "assignment of errors," which in no wise follows, either in order or in subject matter, the real assignment of errors in the typewritten transcript of record. Indeed, there seems to be a good deal of matter argued on the brief that was neither included in the assignment of errors nor made the subject of exception below. It seems proper, therefore, to discuss the assignment of errors rather than to answer the brief of appellant.

ASSIGNMENT I. has to do with certain testimony said therein to have been given in response to a question by one of the attorneys for the defendants. There is nothing in the bill of exceptions substantiating this. It did not happen and we find no reference to the matter in the plaintiff's brief.

ASSIGNMENTS II. and III. relate to the Court's refusal to direct a verdict for the plaintiff for lack of evidence to substantiate the pleas. It must be so apparent from a mere perusal of the bill of exceptions that

the defendants offered substantial testimony in support of each of their defenses that it would seem to us burdensome to repeat the same here. That he misused the money: (Bill of exceptions, page 3, Record, page 24.) Moreover the plaintiff admitted that he used the exact words concerning the chastity of the women members of his church that were charged to him. The addition that he claimed he made in no wise alleviates the charge. (Bill of exceptions, page 2, Record, page 23.) Of course these motions would have to be denied if defendants offered testimony substantiating any one of their pleas.

ASSIGNMENT IV. Plaintiff's Prayer II. There was no evidence of recklessness or commercial purpose on the part of the defendants upon which to base this charge. Besides this prayer would lead the jury to believe it could find for the plaintiff, even though the charge was true.

Plaintiff's Prayer VI. equally ignores the question of truth or falsity and is confusing. Certainly the charge of the learned Judge below could not lead the jury to infer that a plea of privilege could avail a person not clothed with the privilege.

Plaintiff's Prayer VII. ignores the question of truth and the object seems to have been to lead the jury to infer that the court was holding as a matter of law that the meetings of the deacons were private. It wholly ignored the evidence which tended to show that such meetings were publicly held (See bill of exceptions page 4, Record, page 25).

Plaintiff's Prayer XII. ignores the element of falsity. It also ends with an injunction which is set off by itself in a single sentence as follows: "And the jury should find for the plaintiff."

ASSIGNMENT V. Defendants' Prayer II. This prayer sets forth accurately the law of privilege as it

pertains to the defendants, Lawson and Martin. In the case of *Shurtleff v. Stevens* the court said:

"The subject of privileged communications has been much discussed by courts and commentators in England and America within the past fifty years. In 1834, the Court of the Exchequer, in *Toogood v. Spyring*, 1 C., M. & R. 181, speaking through Baron Parke, one of the most learned of English judges, formulated a legal canon that has been adopted on both sides of the Atlantic since, as embodying the true ground upon which the publication of defamatory matter, whether written or oral, is privileged by the occasion or the circumstances under which it is made. In that case the court said, 'In general an action lies for the malicious publication of statements which are false in fact and injurious to the character of another (within the well-known limits to verbal slander), and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs in matters where his interest is concerned. In such cases the occasion prevents the inference of malice which the law draws from unauthorized communications, and affords a qualified defense depending upon the occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits.'"

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"The case of *Farnsworth v. Storrs*, 5 Cush, 412, may be referred to. In that case Mrs. Farnsworth had been charged with immoral conduct while a member of the Congregational Church in Braintree, Mass., of which the defendant was pastor. Having been disciplined according to the usages of the church, Mrs. Farnsworth was expelled, and the resolutions reciting the action of the church were publicly read to the congregation by the pastor, by

order of the church. The pastor was sued for a libel. Chief Justice Shaw, speaking of the authority of churches to act in such cases, says: 'Amongst these powers and privileges established by long and immemorial usage, churches have authority to deal with their members for immoral and scandalous conduct, and for that purpose to hear complaints, to take evidence and to decide; and upon conviction to administer proper punishment by way of rebuke, censure, suspension or excommunication. To this jurisdiction, every member by entering into the church covenant submits, and is bound by his consent. The proceedings of the church are quasi judicial, and therefore those who complain or give testimony, or act and vote, or pronounce the result orally or in writing, acting in good faith and within the scope of the authority conferred by this limited jurisdiction, and not falsely or colorably, making such proceedings a pretense for covering an intended scandal, are protected by law.' "

"They owe such duty to the plaintiff as a brother member, if he is charged with scandalous conduct, to the end that his innocence may be established. They owe it to themselves, lest by indifference they give apparent approval to his conduct. Their intimate official relation to the plaintiff in the cause of their common work leaves them no other alternative; and if in making such inquiry and in acting upon the subject-matter of it, they proceed with honesty of purpose and act from a sense of duty, the law protects them."

Shurtleff v. Stevens. 51 Vt. 501
31 Am. Rep. 698

"Charges prepared against the church or a member thereof according to the usage and discipline of the church are at least qualifiedly privileged."

37 C.J., 651, p. 143.

Defendants' Prayer VII. Defendants' prayer number seven raises the question of truth and will be discussed under assignments seven and eight.

ASSIGNMENT VI. No exception was taken to this part of the court's charge to the jury. The court could not take judicial notice of the rules governing the church nor was the defendant newspaper bound to be acquainted with the rules of the church except so far as it actually saw them administered by the church itself.

ASSIGNMENTS VII. and VIII. are aimed at the Court's instruction to the jury to the effect that truth is a complete defense in an action for libel. These assignments are based on a statement contained in the Court's oral charge to which no exceptions were taken. Any way this is the real question involved in the cases, if it is involved. We say, if it is involved, because plaintiff's counsel at the trial table admitted that truth was a complete defense and the case was tried entirely upon that theory which was abandoned only after the evidence had fully closed. (Bill of exceptions, page 6, typewritten record, page 27.) Of course, truth is a complete defense:

"Proof of the truth of defamatory words employed is, as a rule, a complete defense in an action for libel or slander in the absence of a statutory provision to the contrary. The fact that evil motives prompted the defendant to publish the truth will not impair his defense nor is it material that the defendant did not know at the time of his publication that he was speaking the truth."

17 R. C. L. 325

"At common law and, oftentimes, by force of constitutional or statutory provision, under some limitations, the truth of a charge is a defense to a civil action for defamation. In the absence of statutory or constitutional provision to the contrary, the general rule is that in all civil actions of libel or slander, defendant is justified in law and exempt from all civil responsibility, where he alleges and establishes the truth of the matter charged as defamatory, whether the words are actionable per se

or per quod, and notwithstanding the publication was malicious, or without reason on the part of defendant to believe the imputation to be true.

36 C. J. 193, page 1231.

This proposition has never been questioned in the District of Columbia as far as counsel has been able to ascertain.

ASSIGNMENT IX. There was no exception taken to this part of the charge and no prayer containing any contrary proposition was offered. In *Shurtleff v. Stevens*, 51 Vt. 501 the cases on this point are collected and there the court said:

“Not only this, but the general public not immediately related to these clergymen by the ties of church covenant or society relationship, are more or less directly within the range of that moral influence which they are charged to exert. Thus the general cause of public morality which underlies all good government, and which every good citizen, be he priest or layman, is bound to promote, is affected by the fidelity with which ministers of the gospel discharge the high trust of their appointment. In order to be successful public teachers of morality, they must be unspotted public exemplars of it. Hence, if it be suspected that a wolf in sheep's clothing has invaded their ranks, and sits at their council board, it is not only for the interest of all the members of the association to know the fact, but it is their imperative duty, to make inquiry and ascertain the fact.”

Shurtleff v. Stevens, 51 Vt. 501,
31 Am. Rep. 704.

The court goes on to quote with approval *Kelly v. Sherlock*, and *Kelly v. Tinling*, Law. Rep. 1, Q.B. 686, 699, as follows:

“The same person, a clergyman, was plaintiff in each case, and each case was an action for libel

against the proprietor of a newspaper, for publishing, with editorial comment, defamatory matter of and concerning the plaintiff. It appeared that the plaintiff had some controversy with one of his church wardens, and also with his organist, and had preached one or two sermons reflecting upon the appointment of a Roman Catholic chaplain to the Liverpool borough gaol, and the election of a Jew, by the town council of Liverpool, to be their mayor. In the first case Baron Bramwell, in summing up the evidence to the jury, told them that, 'anything which is calculated to bring a person into ridicule, hatred, or contempt, is a libel. Although that is true as a general rule, yet it is also true, and happy it is that it is true, that every man has a right to discuss matters of public interest. A clergyman with his flock, an admiral with his fleet, a general with his army, a judge with his jury, we are all of us the subject for public discussion. So also is it a matter of public interest, the dispute between the plaintiff and his organist and the way in which the church is used, they are all public matters and may be published.

Shurtleff v. Stevens, 31 Am.
Rep. 705.

ASSIGNMENT X. complains that the Court failed to instruct the jury upon request of the plaintiff that it might bring in a verdict against either of the two women defendants. If it is meant by this that the jury was led to believe that it could not find against one or both of these defendants unless it found against the Tribune, of course, the notion is entirely dispelled by reference to the charge, for the last words of the Court were:

"Now I think that is all I have to say about the case. You, of course, may find in favor of the plaintiff as against all of the defendants, or as against all defendants, or as against the two individual defendants, or against only the defendant Tribune Company. Or you may find in favor of

all defendants or in favor of the two individual defendants and against the Tribune Company, or in favor of the Tribune Company and against the two individuals."

Court's Charge, page 10, Record.

We know of no prayer offered and refused to the effect that the jury might distinguish as between the two women defendants. It is our view from the evidence that the defense of these two women stood on the same bottom and if anybody had any other view it was not called to the attention of the Court below. Of course, a jury might in a tort case find as against all or any number of defendants, but in a case where the liability rests upon exactly the same basis in law and in fact we very much doubt the propriety of the Court's pointing out to the jury that it has the physical power to mulct one or more and absolve another where there is no reason in justice or logic for distinguishing between them.

ASSIGNMENT XI. Error is charged because the Court refused to send to the jury room a copy of Hiscox's Manual which had been admitted in evidence. Now no part of that book had been read to the jury and upon a direct question by counsel for the defendant, the Washington Tribune, the plaintiff had admitted his inability to point out any part of the book having any bearing upon the subject in controversy. To have permitted this book, therefore, to go to the jury room would have been to empower the jury in the absence of court and counsel to decide this case upon some statement entirely outside of the issue, in which case either party might have found himself the subject of a verdict based upon some evidence that they knew nothing about. It has been the uniform practice in the District of Columbia not to permit written evidence to go to the jury room over the objection of counsel.

"The practice of allowing documentary evidence to be carried to the jury room by the jury was severely condemned by Mr. Justice Cowen in *Farmers' Bank v. Whitfield*, 24 Wend. 419. He says: 'The evidence of the law, as it stands upon authority and practice, seems to be all one way, and that is against loading the jury with papers which they often will not understand, and sometimes perhaps cannot even read.' As a general rule, it seems much safer that the contents should be communicated to them only by counsel in the presence of the court."

Langworth v. Connelly, 14 Neb.
340, 45 Am. Dec. 118.

In *Moore v. McDonald*, 68 Md. 321, the Maryland Court of Appeals said:

"By the sixth and last exception, which we will first notice, it appears that 'after the close of the case, and the judgment of the court, upon the prayers, as set forth in the defendant's fifth bill of exceptions, the defendant, by her counsel, offered to the court to allow the jury to have the original will in suit and in evidence; but the Register of Wills of Baltimore City refused to part with the same.'"
... "The court declined the offer and refused to allow the jury to have said original will, but gave them a certified copy thereof instead and the defendant excepted. From this exception it will be seen, that the defendant claimed as a matter of legal right the privilege of sending into the jury room by the jurors themselves a paper that had been used as evidence in the case. This would be opposed to the whole theory and practice of our trial by jury.

"The parties litigant have the clearest right during the progress of the trial in the presence of the court and of the opposite party to submit to the closest scrutiny of every individual juror, if the suitor so desires, any and every instrument of writing that may have been admitted in evidence in the case. But his right ends with the trial in the court room. He has no more right to send, by the hands of the jurors themselves, into the jury room, a piece

of documentary evidence which he believes important to his case, than he would a living witness.

Moore v. McDonald, 68 Md. 321
12 A. 117.

And that rule has never been departed from in this jurisdiction so far as counsel knows or as can be ascertained from the cases.

Washington Times v. Murray
55 App. D.C. 32-35,

Mr. Justice Barbour said:

“The article itself was not allowed to be taken to the jury room. We find no error in the denial of that request.”

And the furthest any court seems to have gone has been to hold that it lies within the sound discretion of the court as to whether or not papers may be taken to the jury room.

64 C. J., 1028 et seq.

ASSIGNMENT XII. If the charge of the Court was correct, of course, there was no occasion to grant a new trial. The motion in arrest is not available to a plaintiff.

In conclusion, it is respectfully submitted that no specific exceptions were taken to any part of the court's charge. The charge which is fully set out in the transcript of record was an exceptionally full, complete and lucid exposition of the law of libel as it pertains to the facts in this case; that the verdict was in keeping with the evidence and that no error was committed in the trial below. We submit that the judgment should be sustained.

Respectfully submitted,

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